

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INDEMNITY INSURANCE COMPANY OF  
NORTH AMERICA; GLAXOSMITHKLINE,

Plaintiff(s),

-against-

LUFTHANSA CARGO A.G.;  
EXEL GMBH, EXEL LOGISTICS, INC.,  
EXEL GLOBAL LOGISTICS INC.; DHL GLOBAL  
FORWARDING; DANZAS AEI INTERCONTINENTAL;  
DHL GLOBAL FORWARDING UK LTD; DHL  
LOGISITCS (UK) LTD; DANZAS LTD; AIR EXPRESS  
INTERNATIONAL, INC.; RADIX GROUP  
INTERNATIONAL DBA DHL GLOBAL FORWARDING,

Defendant(s).  
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**ANSWER OF  
LUFTHANSA CARGO AG  
TO CROSS-CLAIMS**

Docket No.: 07 CV 5576  
(Crotty, J.)

The defendant, Lufthansa Cargo AG (hereinafter "Lufthansa") by the undersigned, as and for its answer to the Cross-Claim contained in the Amended Answer of the defendants, EXEL GMBH, EXEL LOGISTICS, INC., EXEL GLOBAL LOGISTICS, INC., DHL GLOBAL FORWARDING, DANZAS AEI INTERCONTINENTAL, DHL GLOBAL FORWARDING UK LTD, DHL LOGISITICS (UK) LTD, DANZAS LTD, AIR EXPRESS INTERNATIONAL, INC. AND RADIX GROUP INTERNATIONAL DBA DHL GLOBAL FORWARDING, alleges:

1. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Cross-Claim designated "56" except admits that Lufthansa is a direct foreign air carrier of persons, property and mail in international transportation as that term is defined in the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101 et. sec.



2. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the cross-claim designated "57" except admits that on or about September 5, 2006 at Frankfurt, Germany, Lufthansa air waybill no. 020-4881 7436 and EXEL GMBH air waybill no. UXM01 092536 were issued with respect to one piece of freight, said to contain, pharmaceuticals, the true content and condition of which was unknown to this answering defendant for transportation between Germany and the United States.

3. Denies upon information and belief, each and every allegation contained in the paragraph of the cross-claim designated 58 and respectfully refers the Court to the air waybills for the terms and conditions thereof.

4. Denies upon information and belief, each and every allegation contained in the paragraph(s) of the cross-claim designated "59" except admits, upon information and belief, that if plaintiff and co-defendants have any claims or causes of action, then said claims of causes of action arise under a treaty of the United States, specifically, the Convention For The Unification Of Certain Rules For International Carriage By Air done at Montreal on 28, May, 1999, (entered into force on November 4, 2003) reprinted in S. Treaty Doc. No. 106-45, 1999 WL33292734 (2000), (the "Montreal Convention"). The defendant, Lufthansa respectfully refers the Court to the air waybills for the terms and conditions thereof.

5. Denies each and every allegation contained in the paragraph of the cross-claim designated "60".

6. Denies each and every allegation contained in the paragraph of the cross-claim designated "61".

7. Denies each and every allegation contained in the paragraph of the cross-claim designated "62".

8. Denies each and every allegation contained in the paragraph of the cross-claim designated "63".

9. Denies each and every allegation contained in the paragraph of the cross-claim designated "64".

10. Denies each and every allegation contained in the paragraph of the cross-claim designated "65".

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

11. The rights, duties and obligations of the parties herein are governed and controlled by the terms and provisions of the Montreal Convention, the conditions of contract contained in the air waybill and applicable International Cargo Rules Tariffs, all of which are incorporated into and established the contract of carriage between the parties.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

12. Upon information and belief, the freight at issue herein was properly transported by this defendant in accordance with the terms and provisions of the contract of carriage, was delivered at destination to the entity and/or person entitled thereto in the same order and condition as received, without exception, and by reason thereof this defendant has no liability to the plaintiffs or co-defendants herein.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

13. The liability, if any, of this defendant is restricted to and limited by the terms and provisions of the Montreal Convention pursuant to the contract of carriage.



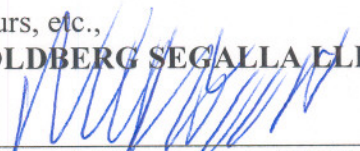
**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

14. If the goods were damaged as alleged in the Complaint, which defendant expressly denies, the damages were caused by or due to inefficiency of packaging or inadequacy of marks and/or instructions for which the defendant is not liable pursuant to the applicable provisions of the air waybill, tariffs, contracts of carriage and/or other documents or transport issued for carriage of the shipment and under the applicable provisions of any controlling statutes, conventions, and/or treaties.

WHEREFORE, the Defendant, Lufthansa Cargo AG, demands judgment dismissing the cross-claim of the co-defendants together with such other and further different relief as to this Court may seem just and proper.

Dated: Mineola, New York  
November 14, 2007

Yours, etc.,  
**GOLDBERG SEGALLA LLP**

  
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